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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,433	12/30/2003	Michael R. Clark	31419.23990	1979

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BROUSE MCDOWELL LPA  
388 SOUTH MAIN STREET  
SUITE 500  
AKRON, OH 44311

EXAMINER
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LUONG, VINH

ART UNIT	PAPER NUMBER
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3682

MAIL DATE	DELIVERY MODE
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05/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/750,433

Applicant(s)

CLARK ET AL.

Examiner

Vinh T. Luong

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/5/07 & 1/16/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,20 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 1-5,8-10,12,13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.


## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Vinh T. Luong  
Primary Examiner

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☒ Other: Attachments 1 and 2.

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1. The Amendment filed on January 16, 2007 has been entered.
2. Claims 6, 7, 21, and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 21, 2006 and October 5, 2006.
3. The drawings were received on March 5, 2007. These drawings are accepted by the Examiner.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether “a plurality of weights” in claim 15/12 covers “a first weight and a second weight” in claim 12 or not. In other words, it is unclear whether the terms “a plurality of weights” and “a first weight and a second weight” refer to the same or different things. See double inclusion in MPEP 2173.05(o). Applicant is respectfully urged to identify each claimed element with reference to the drawings.
6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hervig’332 (US Patent No. 5,449,332).

Hervig'332 teaches an apparatus 10 comprising a reversible pedal body 22, 12 having first and second surfaces 22 and 12 (see Attachment 1 hereinafter "Att. 1"), wherein said first surface 22 is adapted to contact an associated foot, said second surface 12 is adapted to contact an associated shoe, said pedal body 22, 12 having a front (Att. 1) oppositely disposed from a rear (Att. 1), said pedal body 22, 12 having first and second lateral edges (Att. 1) extending between said front and said rear, said pedal body 22, 12 having a longitudinal axis (Att. 1) and a transverse axis 21 (Att. 1), said pedal body 22, 12 being operatively connected to an associated exercise device (weight lifting equipment and bicycle), said pedal body 22, 12 further comprising a first weight 24 and a second weight 24 operatively connected to said pedal body 22, 12, such that one of said surfaces 22, 12 faces substantially upwards as said pedal body 22, 12 approaches an equilibrium position, said first and second weights 24 being oppositely disposed and substantially equidistant from said transverse axis 21 (FIG. 3).

Claim 1 is anticipated by Hervig'332 because Hervig'332 teaches each positively claimed element and its functional statement. On the one hand, Hervig'332's elements 24 inherently are subjected to the gravitational force of the earth. Therefore, they must have an amount or quantity of heaviness, i.e., mass or weight. Therefore, the elements 24 "read on" the claimed weights. On the other hand, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 2-5, 8, 12, 13, 17, and Claim 15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hervig'332 in view of Mitsuo (JP-1-115793).

Regarding claims 2 and 12, Hervig'332 teaches the invention substantially as claimed. However, Hervig'332 does not teach the curved first surface.

Mitsuo teaches the curved first surface C (FIG. 4) in order to effectively stimulate a weak point of the arch part of the foot. Mitsuo, abstract.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to curve the first surface of Hervig'332 in order to effectively stimulate a weak point of the arch part of the foot as taught or suggested by Mitsuo.

Regarding claim 3, Mitsuo's first surface comprises a concave portion (Att. 2) and a convex portion (Att. 2) so as to *substantially* conform to an arch A of a foot B. Mitsuo, abstract.

Regarding claim 4, Mitsuo's first surface (Att. 2) comprises a front edge *substantially* flush with said rear of said pedal body; and a rear edge *substantially* flush with said front of said pedal body 9, 10 as seen in Fig 2.

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Regarding claim 5, Mitsuo's front edge (Att. 2) is left or right directional.

Regarding claim 13, Mitsuo's first surface further comprises a rear edge (Att. 2), said first surface (Att. 2) has a concave portion (Att. 2) transitioning into a convex portion (Att. 2).

Regarding claim 15, Hervig'332's foot pedal comprises a plurality of weights 24.

Regarding claims 8 and 17, Hervig'332 teaches the tread on the first surface (Att. 1) in order to provide friction engagement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tread on Hervig'332's second surface in order to provide friction engagement as taught or suggested by Hervig'332. The use of tread to provide friction is notoriously well known in the art of bicycle pedal.

11. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hervig'332 in view of Loppnow (US Patent No. 4,809,563).

Regarding Claims 9 and 10, Hervig'332 teaches the invention substantially as claimed. However, Hervig'332 does not teach the securing means.

Loppnow teaches securing means 26 operatively connected to the pedal body 12, wherein said securing means 26 is adapted to rotate substantially 360° or 180° around the pedal body 12 in order to obviate its hindrance to the maneuverability of the bicycle. Loppnow, abstract, Figs. 9 and 10 and col. 3, line 59 through col. 5, line 30. See also *In re Hutchison, supra*.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the securing means to the pedal body of Hervig'332 in order to obviate its hindrance to the maneuverability of the bicycle as taught or suggested by Loppnow.

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12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hervig'332 in view of Mitsuo as applied to claim 12 above, and further in view of Loppnow (US Patent No. 4,809,563).

Hervig'332 and Mitsuo teach the invention substantially as claimed. However, Hervig'332 and Mitsuo do not teach the securing means.

Loppnow teaches securing means 26 operatively connected to the pedal body 12, wherein said securing means 26 is adapted to rotate substantially 360° around the pedal body 12 in order to obviate its hindrance to the maneuverability of the bicycle. Loppnow, abstract, Figs. 9 and 10 and col. 3, line 59 through col. 5, line 30. See also *In re Hutchison, supra*.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the securing means to the pedal body of Hervig'332 modified by Mitsuo in order to obviate its hindrance to the maneuverability of the bicycle as taught or suggested by Loppnow.

13. Claims 18, 20, and 23-25 are allowed.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Wende (counterweight) and Hervig'408 (weights 24 and 26).

15. Applicant's arguments filed January 16, 2007 have been fully considered but they are not persuasive.

The previous objections to the abstract, drawings, and claims are withdrawn in view of Applicant's amendment. Further, the previous rejections under 35 USC 102(b) based on Mitsuo, Loppnow, Jean, Fan, or Durham are withdrawn in view of Applicant's amendments to the claims. Applicant's arguments regarding these grounds of rejections are deemed to be moot.

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Similarly, the obviousness type double patenting rejection based on US Patent No. D510,965 is likewise withdrawn in view of Applicant's amended claims.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong  
May 7, 2007



Vinh T. Luong  
Primary Examiner



# **ATTACHMENT 1**

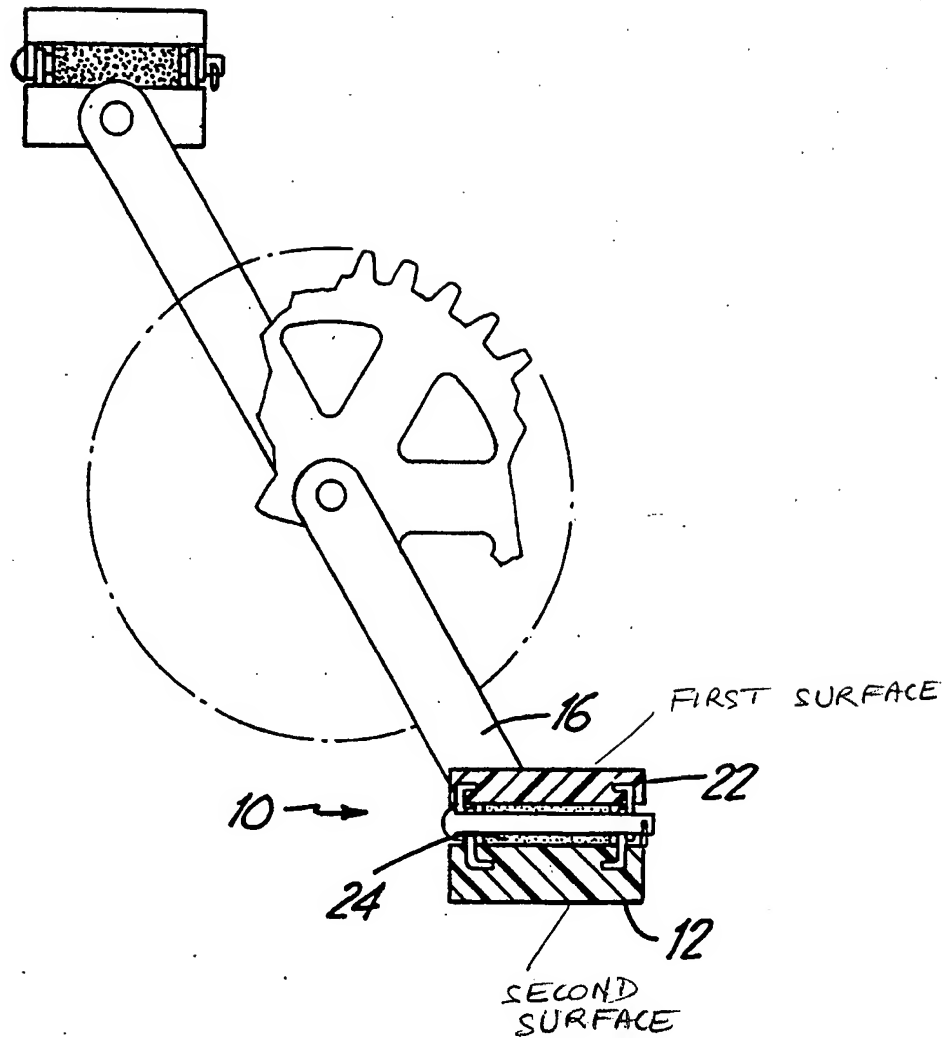
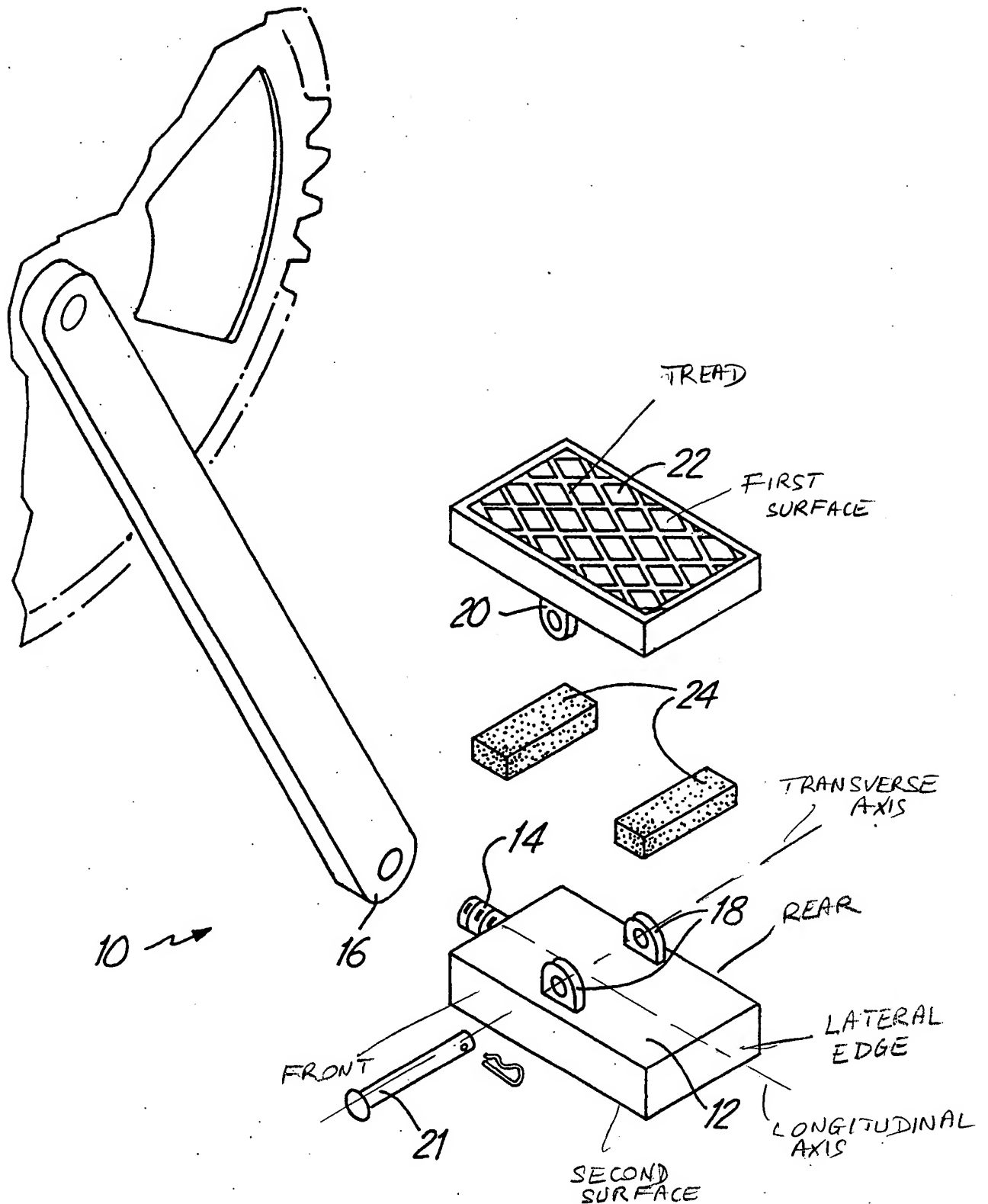


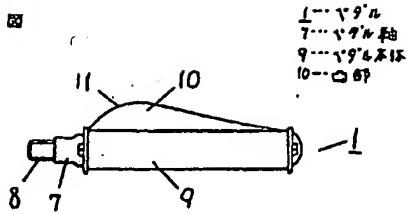
Fig. 1

PAGE 1 OF 2

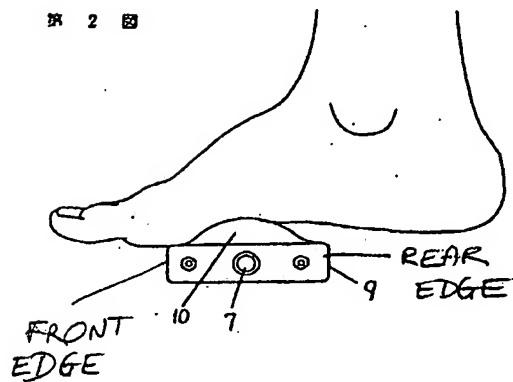


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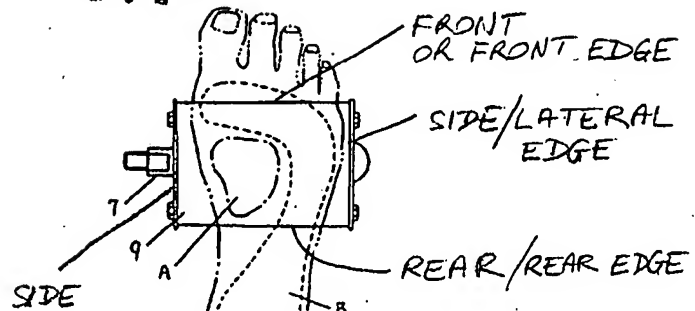
第 1 図



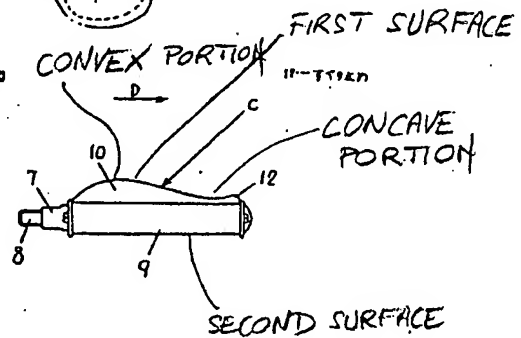
第 2 図



第 3 図



第 4 図



第 5 図

